

WEDNESDAY, 10 o'clock, A. M.
Jan. 26th, 1848.

The Senate was called to order by the President.

The following Senators answered to their names.

Messrs—Abbott, Bourland, Brashear, Bache, Clark, Cuny, Dancy, Gage, Grimes, Jewett, McRae, Perkins, Wallace, Williams and Wootten,—quorum present;

The Journal of the preceding day was read and adopted.

A message was received from the House of Representatives, announcing the death of the Hon. Magnus T. Rodgers, a Representative from Harris County, and inviting the Honorable Senate to attend his funeral in a body.

On motion of Mr. Brashear, the Senate accepted the invitation, and adjourned until to-morrow morning, 10 o'clock.

Thursday, 10 o'clock, a. m.
January 27th, 1848.

The Senate was called to order by the President.

The following Senators answered to their names.

Messrs. Abbott, Bourland, Brashear, Bache, Clark, Cuny, Dancy, Gage, Grimes, Jewett, McRea, Navarro, Perkins, Phillips, Wallace, Williams and Wootten; quorum present.

The Journal of the preceding day was read and adopted.

Mr. Phillips presented the petition of Jesse H. Cartwright, praying for relief, which was read;

And on motion of Mr. Phillips, referred to the committee on Private Land Claims.

Mr. Dancy presented the memorial of the citizens of Fayette county; which was,

On motion of Mr. Clark, referred to the committee on State affairs.

Mr. Gage Chairman of the committee on counties and county boundaries made the following report.

Committee Room,
January 26th, 1848.

HON. J. A. GREER,
President of the Senate:

The committee on counties and county boundaries, to which was referred a bill to be entitled an act to locate the seat of Justice of Navarro county, have had the same under consideration, and have instructed me to report it back to the Senate and recommend its passage without amendments.

D. GAGE, Chairman.

Mr. Abbott, Chairman of the committee on enrolled bills made the following report.

COMMITTEE ROOM,
January 27th, 1848.

Hon. John A. Greer,
President of the Senate:

The committee on Enrolled bills, have instructed me to report that a "Joint Resolution authorizing the Adjutant General to issue a bounty land warrant to Elijah D. Holland."

Joint Resolution authorizing the Commissioner of the General Land Office to issue a patent in the name of Adolphus Sterne, assignee of Maria Jesefa Sanchez.

And "an act to change the name of Robert Franklin Cypert to Robert Franklin Miller," have been correctly enrolled.

Said Resolutions and act were also transmitted, on the 25th inst., to the Governor for approval.

W. C. ABBOTT,
Chairman.

Mr. Perkins, Chairman of the committee on Engrossed bills, reported as correctly engrossed the following bills, viz:

A bill to be entitled an act to change the name of Thomas Harvey, to Thomas Harvey Forrester."

A bill to be entitled an act to legalize the marriage of Rhesa Green Stalcup, and Mary Ann Miller."

A bill to be entitled an act to legitimate Mary Malicia Stalcup, and render her capable of taking by descent the estate or estates of her parents, Rhesa Green Stalcup and Mary Ann Stalcup."

Mr. Gage made the following report.

Committee Room,
January 26th, 1848.

Hon. J. A. GREER,
President of the Senate:

The select committee to which was referred a "bill to be entitled an act authorizing and requiring the Commissioner of the General Land Office to receive gold and silver at the rates of one dollar thereof, for five dollars in Texas Promissory notes, for all Government dues on land, and patents for land" have had the same under consideration, and have instructed me to recommend its passage with the following amendment.

Amendment.

Strike out "five" wherever it occurs, and insert "eight" so as to make it read, one dollar in gold or silver in place of eight dollars in Texas Promissory notes.

D. GAGE, Chairman.

Mr. Phillips made the following report :

Committee Room,
January 27th, 1848.

Hon. J. A. GREER,
President of the Senate :

The select committee to whom was referred a bill to incorporate the city of Laredo, have instructed me to report the same to the Senate, with the following amendments, and recommend their adoption, and the passage of the bill.

In 1st section, 3d line, strike out "Nueces," and insert "Webb." In 18th section, 5th line, after the word "months," strike out the rest of the section.

A. H. PHILLIPS, Chairman.

Mr. Cuny offered the following resolution :

"*Resolved* by the Senate, that the Judiciary committee be instructed to take into consideration the propriety of providing by law, for taking the testimony of persons in Mexico, who are in the service of the United States' government, and to report by bill or otherwise."

Adopted.

Mr. Bache, chairman of the joint special committee on the part of the Senate, to whom was referred the petition of Thomas F. McKinney, made the following report :

Committee Room,
January 24th, 1848.

To the President of the Senate and Speaker of the House of Representatives of the State of Texas :

The joint special committee to whom was referred the petition of Thomas F. McKinney, have given the same rigid investigation, and from the papers accompanying the petition, and the records of the Comptroller's office, the following facts are made manifest. During the years 1835 and 1836, Thomas F. McKinney and Samuel M. Williams advanced to the Republic of Texas about \$99,000, which amount is now audited in favor of McKinney & Williams, as shown by the affidavit of E.

Morehouse, acting Special Auditor, of date February 20th, 1844. That Gail Borden, late Collector of the port of Galveston; under the requirements of an act to regulate the collection of impost duties, passed at a special session of the 6th Congress of the Republic of Texas, and approved July 23d, 1842, providing that thereafter Exchequer Bills should be received by Collectors of Customs at the current rate at which they were selling in the market. In receiving Exchequer Bills the said Borden required merchants and all other persons to pay them to the government at a discount, against which they protested, and notified him not to pay it over to the government, as they held him responsible for a return of the amount discounted from the face of the bills, and instituted suit against him. That Borden retained for his own indemnity, in case judgment were rendered against him, the amount thus discounted from the face of the Exchequer Bills, and deposited the same with McKinney & Williams, who were sureties on his bond, given to the government as Collector, for the purpose of paying it over to the parties to whom it should be adjudged by the courts. That McKinney & Williams in view of their audited claims against the government, appropriated the amount to their own use, not in bad faith, or with an intention of injuring the government to the value of one cent, but as your committee must believe, under the belief that they had a right to retain it in part payment of their just claims against the government. Suit was commenced in 1844, upon the bond, against Borden and his sureties, McKinney & Williams, in the District Court of Galveston county, but was transferred by change of venue to Harris county, where a judgment was rendered against them on the 21st day of May, 1845, for the sum of \$21,905 42, principal, and \$3,504 86 damages, amounting in all to \$25,410 28; which amount of \$21,905 42, principal, is composed (as will appear from reference to the Comptroller's office,) of \$24,816 71 in Exchequer Bills, equal in value to \$16,699 69, par funds, and \$2,052 62 charged in the account against Gail Borden by the government, making the sum total of \$18,752 31, from which should be deducted \$675, Exchequer Bills which remain in the hands of Thomas F. McKinney, and were cancelled by said Borden, Collector, worth at the above rates \$472 50, par value; Gail Borden has also an account which has been presented to the Secretary of the Treasury, for cash advanced and services rendered, while Collector, \$2,519 95, par funds, which account;

as not allowed and refused by the Secretary, unless Borden would deliver over the Exchequer Bills, which he had retained, which account your committee have not investigated, but which, if correct, together with the \$675 in Exchequer Bills above referred to, will reduce the amount of principal to \$15,759 86, instead of \$21,905 42. From this judgment an appeal was taken, and the suit is now pending in the Supreme Court of the State.

It appears that Borden, from the institution of the suit up to the present moment, never filed an answer, and may be regarded as a purely nominal party. Thomas F. McKinney alone defended, and at the trial of the case in the Harris District Court, offered by way of plea, the audited liabilities of the government, as an offset against the judgment; but the plea was overruled. It will be perceived upon an examination of the Comptroller's office, that McKinney & Williams have never been paid by the government any portion of their advances, and that a large amount is yet due them, viz., \$66,500, exclusive of interest, the balance having been transferred by them to other parties, and necessarily at a great loss to them. The petition of McKinney simply asks that he be allowed to liquidate the amount of the judgment, say \$25,410 28, with an equal amount of said claims, which have been received by him as cash for par funds advanced to the government. It will be recollected that when McKinney & Williams made these advances to the government, the temporary authorities could scarcely maintain the national position which had been assumed: that the credit of the government abroad was not sufficiently firm to procure the supplies which were of absolute necessity, for the public defence. In this the hour of adversity application was made to McKinney & Williams, for aid, in money, in order to sustain the army in the field, to which they responded with liberality, and in a manner which must forever stand as a monument of their generosity and ardent patriotism. Your committee are advised that McKinney & Williams have never received of the government any paper below par, that although many years have elapsed since they came to the aid of the government at a sacrifice of their own interest, they remain unpaid: that they did not assist the government in one particular instance, but continued to sustain its credit until the perfect organization of the Republic of Texas in 1836. Your committee are also aware that had the judgment been rendered against McKinney

& Williams alone as sureties, they would have been authorized by the laws of the United States to plead the offset which they now pray for. The interposition of Gail Borden as principal on the bond, although as the facts of the case clearly demonstrate, a nominal party, has excluded them from a privilege which is justly due to them. This particular case presents prominently an equity, which calls irresistibly for legislative action, not to make an appropriation of money, not to grant to McKinney & Williams any peculiar privilege above their fellow-citizens ; but an equity which asks that they be allowed to pay a debt due to the State, with an equal portion of the many thousands which they advanced to the late Republic, in the hour of need and trial, and for which, owing to the embarrassed condition of the country, they have never asked, with the least semblance of importunity. In view therefore of all the circumstances which surround and characterize the application now under the consideration of your committee, as one presenting strong peculiar equity, the condition of Texas when your petitioners advanced the large amount still due and unpaid for the support and sustainment of their country, without credit abroad, and with its energies paralyzed and its resources exhausted: that McKinney & Williams were sued jointly with Gail Borden on his bond as Collector, and were equally bound for the amount to the State: that in appropriating the Exchequer Bills placed in their hands by Borden, the State sustained no injury, and they did it with no bad design.

Your committee believing that each application of a similar character should be based upon, and be investigated with reference to its *characteristic* merit, and the equity which may be made apparent, and feeling apprehensive that a general law might in some instances be abused, have prepared a special bill, which is herewith submitted, and inasmuch as it is believed that the relief asked by Thomas F. McKinney, when his important services to the country are recollected, should be granted, recommend with unanimity that it be passed.

R. BACHE, Chairman,

On part of the Senate.

JAMES L. ALLEN, Chairman,

On part of the House.

Mr. Clark, chairman of the Committee on the Judiciary, made the following report:

Committee Room,
January 26th, 1848.

Hon. JOHN A. GREER,
President of the Senate:

The Judiciary Committee, to whom was referred a bill to be entitled an "Act to prevent Justices of the Peace, and Clerks of District, County and Probate Courts, from issuing executions for costs only," have had the same under consideration, and herewith return the bill to the Senate, and recommend its passage, with the following amendment added to the caption—"unless the judgment of the court was, or shall be for costs only."

EDWARD CLARK, Chairman.

Mr. Clark, chairman of the Committee on the Judiciary, made the following report:

Committee Room,
January 26th, 1848.

Hon. J. A. GREER,
President of the Senate:

The Judiciary Committee have had under consideration the petition of Thomas Coxe of Panola county, asking that he be permitted to emancipate certain persons therein named, and a majority of the committee being opposed to the grant of the privilege, have instructed me to return the petition to the Senate, and recommend that it be laid upon the table.

EDWARD CLARK, Chairman.

On motion of Mr. Phillips, the bill to be entitled an act to incorporate and establish Guadalupe College, was taken up and placed among the orders of the day.

The Senate proceeded to the orders of the day.

A bill to be entitled an act to authorize the sale of lots in the

city of Austin and tract adjoining, was read, and on motion of Mr. Clark, laid upon the table.

A bill to be entitled an act to change the name of Thomas Harvey to Thomas Harvey Forrester—read third time and passed.

A message was received from the House of Representatives, informing the Senate that the House had passed a bill to be entitled an act to incorporate the town of Bonham, in the county of Fannin, which originated in the Senate: also, that the House had concurred in the amendments of the Senate to a bill originating in the House, to be entitled an act to create the county of Webb.

A bill to be entitled an act to legalize the marriage of Rhessa Green Stalcup and Mary Ann Miller—read third time and passed.

A bill to be entitled an act to legitimate Mary Malicia Stalcup, and render her capable of taking, by descent, the estate or estates of her parents, Rhessa Green Stalcup and Mary Ann Stalcup—read third time and passed.

A bill to be entitled an act to exclude fraudulent land certificates from being evidence of title to land, and to prohibit the legal process upon the same—read second time, and on motion of Mr. Brashear, referred to the Committee on the Judiciary.

Joint resolution requiring the Commissioner of the General Land Office to issue a patent in the name of the heirs of William P. Nunn—read second time, and on motion of Mr. Gage, referred to the Committee on Private Land Claims.

A bill to be entitled an act to incorporate and establish Guadalupe College—read second time—question on the adoption of the substitute offered by Mr. Gage, for the amendment of Mr. Grimes—lost. Mr. Grimes, by leave, withdrew his amendment, and bill passed to a third reading.

A bill to be entitled an act to prohibit the boards of Land Commissioners in each county in this State, from issuing certificates to any claimant whatsoever, unless the applicant or claimant shall previously thereto have received a conditional certificate from some competent board, together with the report of the Committee on State Affairs, thereon, reporting substitute, was read, and report adopted.

Mr. Wallace moved to amend by striking out the following

words in section 2d, "or their rights to the same shall be forever barred."

Mr. Perkins moved to strike out "twelve months," and insert "two years,"—lost.

The question then recurred on Mr. Wallace's amendment, upon which the yeas and nays were called, and stood thus:

Yeas—Messrs. Bache, Clark, Navarro, and Wallace—4.

Nays—Messrs. Abbott, Bourland, Cuny, Dancy, Gage, Grimes, Jewett, Parker, Perkins, Phillips, Williams and Wootten—12.

So the amendment was rejected.

Mr. Clark offered the following as a substitute for the 2d section: "That no board of Land Commissioners shall have power or authority, after the expiration of two years from the passage of this act, to issue unconditional certificates to any one.

On motion of Mr. Phillips, the bill, together with the amendments, was referred to the Committee on Public Lands.

A bill to be entitled an act to create a lien on domestic vessels, for supplies and materials furnished them, and for repairs and labor done thereon—passed to a third reading.

A bill to be entitled an act to authorize the city of Galveston to appoint firemen, and exempt the same from militia and jury duty, together with the report of the Committee on State Affairs thereon, offering amendments, was read—report adopted, and bill passed to a third reading.

Joint Resolutions requesting the Senators and Representatives of Texas, in the Congress of the United States, to protest against the relinquishment of the Mexican Provinces or States conquered by, and in possession of the United States; and also to protest against any law which shall be intended to prevent the citizens of slave-holding States from taking their property with them, in emigrating to said acquired territory," together with the report of the Committee on State Affairs thereon, was read.

Mr. Phillips moved to amend the caption by inserting "without indemnity" after the word "States," in fifth line—adopted, and resolutions passed to a third reading.

A bill to be entitled an act to repeal the laws of the late Republic of Texas, creating a board of medical censors, together with the report of the Committee on State Affairs thereon, was read, and bill passed to a third reading.

Mr. Parker presented the remonstrance of the citizens of Houston county, which, on motion of Mr. Parker, was referred to the Committee on Counties and County Boundaries.

A bill to be entitled an act, authorizing persons, who have received donation certificates under the provisions of "an act granting lands to those who were in the battle of San Jacinto and other battles,"—approved, Dec. 20th, 1837—to alienate said certificates, and the lands acquired under them, together with the report of the Committee on the Judiciary thereon, proposing an amendment, was read—the yeas and nays were called, on the adoption of the report, and stood thus:

Yeas—Messrs. Abbott, Bourland, Brashear, Bache, Clark, Cuny, Dancy, Grimes, Jewett, M'Rae, Navarro, Perkins, Phillips, Wallace, and Williams—15.

Nays—Messrs. Gage, Parker, and Wootten—3.

So the report was adopted.

Mr. Gage offered the following as a substitute for the caption: "An Act for the benefit of Land Speculators"—rejected.

Mr. Wallace moved to amend by inserting after the word "person" the following words: "Except Jesse Walling, John C. Walling, Robert W. Smith, and Jacob Lewis"—rejected, and bill passed to a third reading.

On motion of Mr. Bourland, the Senate adjourned until 10 o'clock, to-morrow morning.

Friday, 10 o'clock, A.M. }
January 28th, 1848. }

The Senate was called to order by the President. The following Senators answered to their names:

Messrs. Abbott, Brashear, Bache, Clark, Cuny, Dancy, Gage, Grimes, Jewett, McRae, Navarro, Perkins, Phillips, Wallace, Williams and Wootten—quorum present.

The Journal of the preceding day was read and adopted.

Mr. Jewett presented a communication from B. Gillespie, Esq. relative to the digest of the laws, which was, on motion of Mr. Jewett, referred to the Committee on the Judiciary.